

253469

STATE OF SOUTH CAROLINA

(Caption of Case)

Application of Palmetto of Richland County LLC for approval of a contract with MPG Two Notch, LLC, providing for a reduced non-recurring charge for Two Notch Crossing Commercial Development in Richland County

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

2014 NOV 19 PM 3:11

COVER SHEET

PUBLIC SERVICE COMMISSION

DOCKET
NUMBER: 2014 - 450 - S

(Please type or print)

Submitted by: John M.S. Hoefer

SC Bar Number: 2549

Telephone: 803-252-3300

Fax: 803-771-2410

Other:

Address: Willoughby & Hoefer, P.A.

Post Office Box 8416

Columbia, SC 29202

Email: jhoefer@willoughbyhoefer.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition☐ Request for item to be placed on Commission's Agenda expeditiously☐ Other:

INDUSTRY (Check one)

- ☐ Electric
☐ Electric/Gas
☐ Electric/Telecommunications
☐ Electric/Water
☐ Electric/Water/Telecom.
☐ Electric/Water/Sewer
☐ Gas
☐ Railroad
☒ Sewer
☐ Telecommunications
☐ Transportation
☐ Water
☐ Water/Sewer
☐ Administrative Matter
☐ Other: _____

NATURE OF ACTION (Check all that apply)

- | | | |
|--|--|--|
| <input type="checkbox"/> Affidavit | <input type="checkbox"/> Letter | <input type="checkbox"/> Request |
| <input type="checkbox"/> Agreement | <input type="checkbox"/> Memorandum | <input type="checkbox"/> Request for Certification |
| <input type="checkbox"/> Answer | <input type="checkbox"/> Motion | <input type="checkbox"/> Request for Investigation |
| <input type="checkbox"/> Appellate Review | <input type="checkbox"/> Objection | <input type="checkbox"/> Resale Agreement |
| <input checked="" type="checkbox"/> Application | <input type="checkbox"/> Petition | <input type="checkbox"/> Resale Amendment |
| <input type="checkbox"/> Brief | <input type="checkbox"/> Petition for Reconsideration | <input type="checkbox"/> Reservation Letter |
| <input type="checkbox"/> Certificate | <input type="checkbox"/> Petition for Rulemaking | <input type="checkbox"/> Response |
| <input type="checkbox"/> Comments | <input type="checkbox"/> Petition for Rule to Show Cause | <input type="checkbox"/> Response to Discovery |
| <input type="checkbox"/> Complaint | <input type="checkbox"/> Petition to Intervene | <input type="checkbox"/> Return to Petition |
| <input type="checkbox"/> Consent Order | <input type="checkbox"/> Petition to Intervene Out of Time | <input type="checkbox"/> Stipulation |
| <input type="checkbox"/> Discovery | <input type="checkbox"/> Prefiled Testimony | <input type="checkbox"/> Subpoena |
| <input type="checkbox"/> Exhibit | <input type="checkbox"/> Promotion | <input type="checkbox"/> Tariff |
| <input type="checkbox"/> Expedited Consideration | <input type="checkbox"/> Proposed Order | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Interconnection Agreement | <input type="checkbox"/> Protest | |
| <input type="checkbox"/> Interconnection Amendment | <input type="checkbox"/> Publisher's Affidavit | |
| <input type="checkbox"/> Late-Filed Exhibit | <input type="checkbox"/> Report | |

Print Form

Reset Form

WILLOUGHBY & HOEFER, P.A.

ATTORNEYS & COUNSELORS AT LAW

930 RICHLAND STREET

P.O. BOX 8416

COLUMBIA, SOUTH CAROLINA 29202-8416

RECEIVED
2014 NOV 19 PM 3:42
SC PUBLIC SERVICE
COMMISSION

AREA CODE 803
TELEPHONE 252-3300
TELECOPIER 256-8062

MITCHELL M. WILLOUGHBY
JOHN M.S. HOEFER
RANDOLPH R. LOWELL**
TRACEY C. GREEN
BENJAMIN P. MUSTIAN**
ELIZABETH ZECK*
ELIZABETHANN LOADHOLT CARROLL
CHAD N. JOHNSTON
JOHN W. ROBERTS
ANDREW J. D'ANTONI

November 19, 2014

*ALSO ADMITTED IN TX

**ALSO ADMITTED IN THE DISTRICT OF COLUMBIA

VIA HAND-DELIVERY

The Honorable Jocelyn D. Boyd
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29211

RE: Application of Palmetto of Richland County LLC for Approval of Contract with
MPG Two Notch, LLC Providing for a Reduced Non-recurring Charge

Dear Mrs. Boyd:

Enclosed for filing are the original and one (1) copy of the Application of Palmetto of Richland County LLC in the above-referenced matter. Also enclosed please find a proposed notice of filing.

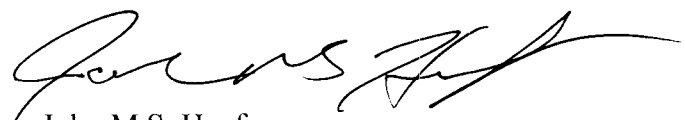
By copy of this letter, we are providing a copy of this filing to the Executive Director of ORS in accordance with 26 S.C. Code Regs. 103-504.

I would appreciate your acknowledging receipt of this Application by date-stamping the extra copy that is enclosed and returning it to me via my courier.

If you have any questions or need any additional information, please do not hesitate to contact me. With best regards, I am

Sincerely,

WILLOUGHBY & HOEFER, P.A.


John M.S. Hoefer

JMSH/cbs

Enclosures

cc: Honorable C. Dukes Scott
Mr. Martin Fridy

**PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
DOCKETING DEPARTMENT
NOTICE OF FILING**

DOCKET NO. 2014-____-S

PALMETTO OF RICHLAND COUNTY LLC – APPLICATION FOR APPROVAL OF A CONTRACT PROVIDING FOR REDUCED NON-RECURRING CHARGE

Pursuant to 10 S.C. Code Regs. 103-541 (2012), Palmetto of Richland County LLC (“PRC”) has filed an Application with the Public Service Commission of South Carolina (“Commission”) for approval of a contract between PRC and MPG Two Notch, LLC, providing for a reduced non-recurring charge associated with the extension of wastewater service to certain customers in the Two Notch Crossing commercial development in Richland County. According to the Application and contract, PRC is honoring a quote for non-recurring charges associated with the extension of service to said customers given to MPG Two Notch, LLC by the previous owner of PRC’s wastewater system, the City of Columbia.

A copy of the Application is on file in the offices of the Public Service Commission of South Carolina, 101 Executive Center Drive, Synergy Business Park, Columbia, South Carolina 29210, the Commission’s website at www.psc.sc.gov and is available from John M.S. Hoefer, Esquire, Willoughby & Hoefer, P.A., Post Office Box 8416, Columbia, South Carolina 29202.

A public hearing, if scheduled, will be held in Columbia, South Carolina in the offices of the Commission at the above address, for the purpose of receiving testimony and other evidence from all interested parties regarding this Application. The time and date of this hearing will be furnished to all interested parties at a later date.

Any person who wishes to testify and present evidence at a hearing concerning these matters should notify, in writing, (1) the Commission’s Docketing Department at the Post Office Box address shown below, (2) the South Carolina Office of Regulatory Staff, Post Office Box 11263, Columbia, South Carolina 29211, and (3) John M. S. Hoefer, Esquire, Willoughby & Hoefer, P.A., Post Office Box 8416, Columbia, South Carolina 29202-8416, on or before _____. ***Please refer to Docket No. 2014-____-S.***

Any person who wishes to participate in this matter, as a Party of Record with the right of cross-examination, should file a Petition to Intervene in accordance with the Commission’s Rules of Practice and Procedure, on or before _____, and indicate the amount of time required for his presentation. Please include an email address for receipt of future Commission correspondence in the Petition to Intervene. ***Please refer to Docket No. 2014-____-S.***

Any person who wishes to be notified of the hearing, but does not wish to present testimony or be a party of record, may do so by notifying the Docketing Department, in writing, at the address below on or before _____. ***Please refer to Docket No. 2014-____-S.***

PLEASE TAKE NOTICE: Any person who wishes to have his or her comments considered as part of the official record of this proceeding **MUST** present such comments, in person, to the Commission during the hearing.

Persons seeking information about the Commission’s Procedures should contact the Commission in Columbia at 803-896-5100.

Public Service Commission of South Carolina
Attn: Docketing Department
Post Office Drawer 11649
Columbia, SC 29211
_____, 2014

RECEIVED
JUL 18 2014
SC PUBLIC SERVICE
COMMISSION

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2014-____-S

IN RE:)
)
Application of Palmetto of Richland County)
LLC for approval of a contract with)
MPG Two Notch, LLC, providing)
for a reduced non-recurring charge for)
Two Notch Crossing Commercial)
Development in Richland County)

APPLICATION

Palmetto of Richland County LLC (“Applicant” or “Utility”) hereby submits a contract between it and MPG Two Notch, LLC, (collectively “Developer”) for approval by the Commission pursuant to 10 S.C. Code Regs.103-541 (2012). In support of this Application, Applicant would respectfully show as follows:

1. Applicant is a public utility currently authorized to operate a wastewater system under the jurisdiction of the Commission in certain portions of Richland County. A schedule of the current rates and charges for Applicant’s wastewater service has previously been approved by the Commission in Docket No. 2012-273-S by way of Order No. 2012-960, issued December 21, 2012.
2. The Applicant seeks approval of an agreement entered into between Applicant and the Developer on or about July 29, 2014 (“Agreement”), a copy of which is attached hereto and incorporated herein by reference as Exhibit “1.” Applicant has extended wastewater utility service to certain specific real properties within a commercial shopping center developed by Developer and has agreed to provide, and is providing, service to same pursuant to all of the terms, conditions, rates and charges set forth in Applicant’s currently approved rate schedule on file with this Commission. In accordance with the

Handwritten signature #1

terms of the Agreement, however, Applicant seeks approval to impose a reduced non-recurring charge for connecting certain of Developer's properties in one shopping center to Applicant's system as described in the succeeding paragraph.

3. Under the terms of the Agreement, Applicant proposes to charge Developer non-recurring charges for extension of service consistent with terms agreed to between Developer and the City of Columbia ("City") with respect to three specific properties. These terms, which were agreed to by Developer and the City without Applicant's knowledge or consent, will result in Developer paying \$26,460.00 in non-recurring charges for the extension of sewer service to said properties identified in the Agreement. Under Applicant's approved rate schedule, which provides for the same non-recurring charges as are normally charged by the City, the non-recurring charges would have been \$79,262.40.00. Performance of the Agreement is expressly conditioned upon its approval by this Commission.

4. The Developer's property is within Applicant's Commission authorized service territory in Richland County. Accordingly, no other public utility is authorized to serve Developer's property.

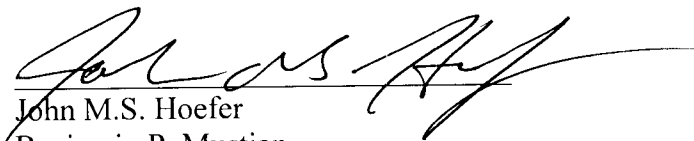
5. Applicant submits that the reduction in the non-recurring charges to be imposed upon Developer is warranted and in the public interest. Because the non-recurring charges are "below-the-line" revenues, the reduction will not affect Applicant's customers. Further, although not bound by the City's agreement with Developer regarding non-recurring charges, Applicant acknowledges that a lack of communication by City planning and utility personnel with Developer during the permitting and construction phases of its commercial shopping center project regarding the acquisition of City's system by Applicant (as authorized by this Commission in Order No. 2012-960)

led Developer to rely upon reduced non-recurring charge costs quoted by the City.¹ Finally, approval of the Agreement will foster resolution of a potential dispute which could complicate the provision of service to certain of the commercial tenants in the shopping center being developed by Developer.

6. Applicant further submits that no hearing in this matter is required under S.C. Code Ann. § 58-5-240(G) (Supp.2013) given that the reduced non-recurring charge proposed to be placed into effect does not (a) require a determination of Applicant's entire rate structure and overall rate of return or (b) result in any rate increase to Applicant.

7. All correspondence and communications regarding this matter should be sent to the undersigned.

WHEREFORE, having fully set forth its Application, Applicant prays that the Agreement be approved, that a hearing on the within matter be waived or review of the within application be expedited, and that Applicant be granted such other and further relief as the Commission may deem just and proper.


John M.S. Hoefer
Benjamin P. Mustian
WILLOUGHBY & HOEFER, PA
Post Office Box 8416
Columbia, South Carolina 29202-8416
803-252-3300
Attorneys for Applicant

Columbia, South Carolina
This 18th day of November, 2014

¹ This lack of communication is evidenced by the fact that the City approved the issuance of a wastewater facilities operating permit by DHEC to MPG in November of 2013, some eleven months after the Commission had approved the transfer of the system to Applicant and some eight months after the transaction had been closed. Compare Order No. 2012-960 and Notice of Closing of Transaction dated March 21, 2013, Docket No. 2012-273-S with Agreement Exhibit "B" (DHEC Operating Permit).

STATE OF SOUTH CAROLINA)
)
)
COUNTY OF RICHLAND) REDUCED NON-RECURRING
) CHARGE AGREEMENT

This Reduced Non-Recurring Charge Agreement ("Agreement") is entered into this ___ day of July, 2014, by and between MPG Two Notch, LLC, a South Carolina limited liability company ("MPG") and Palmetto of Richland County LLC, a Delaware limited liability company authorized to do business in South Carolina ("PRC").

WHEREAS, MPG is the developer of those certain tracts of land located in Richland County consisting of 10254 Two Notch Road, 10258 Two Notch Road, and 10266 Two Notch Road, upon which it has developed and is developing a commercial shopping center known as Two Notch Crossing consisting, or to consist, of certain retail establishments including those identified on Exhibit "A" hereto (hereinafter the "Development" or "Property"); and,

WHEREAS, PRC is a public utility, authorized to serve the Development pursuant to Public Service Commission of South Carolina ("PSC") Order No. 2012-960 issued December 21, 2012, in Docket No. 2012-273-S

WHEREAS, the City of Columbia ("City") previously owned the wastewater collection system which serves the Property, which system was transferred to PRC on March 21, 2013, in accordance with Order No. 2012-960; and,

WHEREAS, although MPG and the retail establishments set forth on Exhibit "A" were not customers of the City at the time of the aforementioned transfer, MPG had previously and has subsequently negotiated with the City for certain terms and conditions for the extension of sewer service to the Development, including the issuance of wastewater facilities construction and operating permits from the Department of Health and Environmental Control ("DHEC") to MPG, same having been issued at the behest of the City but without the knowledge or consent of PRC, a copy of which operating permit is attached hereto as Exhibit "B;" and

WHEREAS, the wastewater facilities serving the Property have now been installed and connected to PRC's system; and

WHEREAS, in the course of its negotiations with the City, again without the knowledge or consent of PRC, MPG obtained the agreement of the City for a reduction in the non-recurring charges consisting of the sewer service connection charge and the plant expansion fee provided for in the City's sewer rate ordinance, said ordinance provisions being the same as those approved by the PSC for imposition by PRC in Order No. 2012-960; and

WHEREAS, the City failed to apprise MPG of PRC's ownership of the system serving the Property and failed to coordinate with PRC Developer's subsequent construction of the

wastewater facilities serving the Property and its connection to PRC's system; and

WHEREAS, PRC is willing to honor the City's commitment to MPG with respect to the aforementioned non-recurring charges for the retail establishments shown on Exhibit "A", subject to the conditions set forth below,

NOW THEREFORE, FOR AND IN CONSIDERATION OF the mutual promises herein contained, five and no 100ths (\$5.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged each to the other. MPG and PRC agree as follows:

1. PRC shall honor the City's commitment to impose upon MPG the non-recurring charges for the retail establishments in the Development as shown on Exhibit "A" and in the specific amounts reflected thereupon. MPG shall pay such non-recurring charges to PRC at or before the signing of these presents.
2. MPG agrees that it will abide by all other terms and conditions of PRC's rate schedule authorized by the PSC in Order No. 2012-960 pertaining to the extension of service by PRC to the Development, including but not limited Sections 8-10 thereof, and any other provisions of law, rule or regulation pertaining to the extension of utility service to a previously un-served property. Among these terms and conditions are the following:
 - a. MPG shall convey to PRC by recorded deed and easement, free and clear of all liens and encumbrances, all wastewater lines, manholes, or other collection system facilities that have been or will be constructed in the Development;
 - b. Prior to conveying the forgoing facilities, MPG shall clean and make a video inspection of all sewer mains and laterals and provide to PRC a copy of the video inspection results;
 - c. MPG shall have its contractor repair any and all construction defects;
 - d. MPG shall provide PRC with copies of the pressure testing results for all sewer lines;
 - e. MPG shall provide PRC with a non-lien affidavit and release from its contractors, both general and utility-specific, with respect to the foregoing facilities, and
 - f. MPG shall provide PRC with a materials list for the foregoing facilities and include therein original cost and price information pertaining thereto.
3. MPG agrees, at its sole cost and expense, to assign to PRC all operating permits associated with the wastewater facilities serving the Property including, but not limited to, the aforementioned DHEC operating permit attached as Exhibit "B" and that it will provide to PRC copies of any and all construction drawings, plans

or specifications associated therewith. MPG shall not become PRC's customer, but the tenants now located, or in the future located, on the Property shall apply for the establishment of separate service accounts with PRC.

4. MPG acknowledges and understands that the Agreement is the result only of the special circumstances recited herein (i.e., the failure of the City to apprise MPG or PRC of the pertinent circumstances regarding the extension of wastewater service to the Development at reduced non-recurring charges based upon MPG's specific representations to the City regarding wastewater flow rates), that the Agreement applies only to the Development and the reduced non-recurring charges thereunder apply only to the retail establishments or properties specifically identified on Exhibit "A" hereto, that the Agreement establishes no precedent with respect to the amount of non-recurring charges which may be imposed by PRC or its affiliates, and that PRC shall have no obligation to enter into any similar agreement with MPG or any other property owner in PRC's authorized service territory or beyond.
5. The parties acknowledge that Agreement shall be subject to approval of the PSC. MPG agrees to cooperate with PRC in the submission of an application to the PSC for such approval and to provide such documentation or other evidentiary support as may become necessary in PRC's sole discretion to obtain such approval. Should such approval not be granted, PRC shall have no obligation to pursue an appeal of any PSC order denying same, this Agreement shall be deemed null and void, and MPG shall become obligated to pay the non-recurring charges provided for in PRC's rate schedule that has been approved by the PSC.
6. This Agreement, including the Exhibits hereto, sets forth the entire agreement and understanding of the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements, promises, covenants, arrangements, communications, representations or warranties, whether oral or written, by any officer, employee or representative of any party hereto. Nothing expressed or implied herein is intended or shall be construed to confer upon or give to any person or entity other than the parties hereto, and their successors or permitted assigns, any rights or remedies under or by reason of this Agreement. Neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned by either of the parties hereto without the prior written consent of the other party. This Agreement shall be governed by the laws of the State of South Carolina.

[SIGNATURE PAGE FOLLOWS]

WITNESSES:

PI Sl.
Harry McEades

MPG TWO NOTCH LLC

By: [Signature]
Its: MANAGER

Harry Bonar
Vice President

PALMETTO OF RICHLAND COUNTY LLC

By: [Signature]
Its: Vice President

EXHIBIT "A" TO REDUCED
NON-RECURRING CHARGE
AGREEMENT

10254 Two Notch- B (Great Clips)	-- \$8,820.00 (3.0 SFEs x \$2,940.00)
10254 Two Notch - C- Marco's Pizza	-- \$2,940.00 (1.0 SFEs x \$2,940.00)
10254 Two Notch -D- Planned Restaurant	-- \$14,700.00 (5.0 SFEs x \$2,940.00)

TOTAL NON-RECURRING CHARGES: \$26,460



Catherine B. Templeron, Director

Promoting and protecting the health of the public and the environment

WASTEWATER

FINAL APPROVAL TO PLACE INTO OPERATION 1074552

ISSUED TO: MAGNOLIA PROPERTY GROUP
1151 E WASHINGTON ST
STE 202
GREENVILLE SC 29601-2836

for the operation of a wastewater treatment/collection system permitted under construction permit 37530-WW, dated March 12, 2013, as described below

PROJECT NAME: TWO NOTCH ROAD DEVELOPMENT
COUNTY: Richland
PROJECT DESCRIPTION: This Permit to Operate is for the installation of approximately 1133 LF of 8" PVC gravity sewer main and 4 manholes.
PERMITTED FLOW: 2125 gallons per day
WWTP: COLUMBIA/METRO PLANT (SC0020940)

SPECIAL CONDITIONS:

1. This construction permit is being issued based on the technical review being provided by the CITY OF COLUMBIA under the Delegated Review Program. An approval to place in operation will not be granted if there are certain deficiencies that are noted regarding the requirements of R.61-67.

This approval is based on the Engineer's letter of certification signed by Kevin R Krick PE, P.E., South Carolina Registration No. 22453.

DATE ISSUED: November 27, 2013

Steven E Hauptmann, Regional Engineer Associate
MIDLANDS REGION BEHS COLUMBIA

cc: Mr. Krick, P.E.
COLUMBIA CITY OF